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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,400	08/12/2002	Kunio Kawaguchi	450101-03365	4955
20/999 7590 06/02/2009 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151				
EXAMINER				
HAMZA, FARUK				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/089,400

**Applicant(s)**

KAWAGUCHI ET AL.

**Examiner**

FARUK HAMZA

**Art Unit**

2455

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. This action is responsive to the communication filed on April 14, 2009. Claims 1, 5, 14 and 17 have been amended. Claims 6-13 have been canceled. Claims 1-5 and 14-19 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5 and 14-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim language is unclear and vague. It is unclear to the examiner what applicant meant by "a client apparatus for sending notification regarding recording of an information picture and for sending information specifying the information picture comprising picture information and related information, wherein the picture information includes picture image data and related information includes program information, wherein the information picture causes a predetermined operation to be processed as a single unit when the operation command is given, wherein each of the one or more instructions is processed as a function of the operation command".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 1-5 and 14-19 are rejected under 35 U.S.C. 102(e) as being anticipated by the U. S. Patent No. 7,039,599, issued to Merriman et al., hereinafter Merriman.

As the examiner understands claim 1, Merriman teaches an information picture utilization apparatus comprising:

a client apparatus for sending notification regarding recording of an information picture and for sending information specifying the information picture comprising picture information and related information, wherein the picture information includes picture image data and related information includes program information (4:14-30 - feedback loop 23 (Fig.1) provides notification of recording of information picture (Fig. 2, step 36)); and

a server apparatus for receiving the notification regarding the recording of the information picture (4:66-67 and 5:1-6 - advertisement and predictive model servers),

wherein the information picture causes a predetermined operation to be processed as a single unit when an operation command is given (4:44-49 - automatic update of ad delivery monitoring database), and

wherein the predetermined operation is one or more instructions, and wherein each of the one or more instructions is processed as a function of the related information upon execution of the operation command (3:13-36, 4:45-59), and

wherein each of the plurality of operation commands comprise a specific predetermined operation and instructions (3:13-36, 4:45-59).

As the examiner understands claim 2, Merriman teaches the information picture utilization apparatus as set forth in claim 1, wherein said information picture includes time limit information in said related information; and said client inhibits execution of the notification to the server by interpreting said time limit information (4:49-53 - execution is limited by time period).

As the examiner understands claim 3, Merriman teaches the information picture utilization apparatus as set forth in claim 1, wherein said information picture includes time limit information in said related information; and said client inhibits execution of a predetermined operation by interpreting said time limit information (4:49-53).

As the examiner understands claim 4, Merriman teaches the information picture utilization apparatus as set forth in claim 1, wherein said client inhibits

execution of the notification to the server on the basis of operation history based on the information picture (4:49-53).

As the examiner understands claim 5, Merriman teaches an information picture utilization apparatus comprising:

a client apparatus for sending notification regarding recording of an information picture and for sending information specifying the information picture comprising picture information and related information, wherein the picture information includes picture image data and related information includes program information (4:14-30 - feedback loop 23 (Fig.1) provides notification of recording of information picture (Fig. 2, step 36)); and

a server apparatus for receiving the notification regarding the recording of the information picture (4:66-67 and 5:1-6 - advertisement and predictive model servers),

wherein the information picture is sent and recorded into said server apparatus by utilizing picture information and related information (4:31-43 - feedback information), and

wherein the utilization of the picture information and the related information causes a predetermined operation to be processed as a single unit when an operation command is given (4:44-49 - automatic update of ad delivery monitoring database), and

wherein each of the one or more instruction is processed as a function of the related information upon execution of the operation command (3:13-36, 4:45-59), and

wherein each of a plurality of operation command comprise a specific predetermined operation and instructions (3:13-36, 4:45-59).

As the examiner understands claim 14, Merriman teaches an information picture management apparatus for carrying out management of an information picture in which picture information and related information for prescribing at least peculiar processing are caused to be one handling unit, which is delivered to an information terminal connected through network, wherein said information picture management apparatus comprises: a registration information recording unit for recording registration information relating to information picture delivered to the information terminal and registered (4:31-43 and Fig. 1, database 20 is recording registration information relating to information picture - banner ads served); an updating permission/negation unit for determining permission/negation of updating with respect to information picture caused to undergo management by the registration information in accordance with updating condition set in advance (4:44-53 - pre-sets on direct advertising campaigns that are set in advance); and an information picture updating unit for updating processing with respect to information picture determined to be permitted by the updating permission/negation section (4:49-53 - banner serving criteria),

wherein each of the one or more instruction is processed as a function of the related information upon execution of the operation command, wherein the picture information includes picture image data and the related information includes program information (3:13-36, 4:45-59), and

wherein each of a plurality of operation command comprise a specific predetermined operation and instructions (3:13-36, 4:45-59).

As the examiner understands claim 15, Merriman teaches the information picture management apparatus as set forth in claim 14, wherein information pictures within the range from the number where at least one of registration and updating of the information picture is approximately a time up to a predetermined number should be updated as the updating condition (5:14-27).

As the examiner understands claim 16, Merriman teaches the information picture management apparatus as set forth in claim 15, wherein predetermined numbers are set with respect to respective ones of plural information terminals, and are changed in accordance with change instructions from the information terminals (5:14-27).

Claims 17-19 are rejected in view of the above rejection of claims 14-16. Claims 17-19 are essentially the same as claims 14-16, respectively, except that they set forth the invention as a computer program product rather than an apparatus, as do claims 14-16.

***Response to Arguments***



4. Applicant's arguments have been fully considered but they are not persuasive.

In the remarks applicant argues in substance that; A) Merriman does not teach the claim limitation "the information for specifying the information picture causes a predetermined operation to be processed as a single unit when an operation command is given and that each of the one or more instruction is processed as a function of the related information upon execution of the operation command, and each of a plurality of operation command comprises a specific predetermined operation and instructions".

In response to A) The claim language failed to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is reminded that claim limitation must be given their reasonable broadest interpretation. Merriman teaches dynamically or automatically replacing or disabling the distribution of advertisements based on certain criteria (see Column 3, lines 13-36, Column 4, lines 45-59). The examiner is broadly interpreting this to be "the information for specifying the information picture causes a predetermined operation to be processed as a single unit when an operation command is given and that each of the one or more instruction is processed as a function of the related information upon execution of the operation command, and each of a plurality of operation command comprises a specific predetermined operation and instructions". Therefore, teaching of Merriman meets the claim limitation.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faruk Hamza whose telephone number is 571-272-7969. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll –free).

Faruk Hamza

Patent Examiner

Group Art Unit 2455

/Faruk Hamza/

Examiner, Art Unit 2455